

IN THE MATTER OF THE	*	IN THE
ZONING APPEAL APPLICATION	*	CIRCUIT COURT
OF	*	FOR
OLD TRAILS PARTNERSHIP	*	HARFORD COUNTY
BOARD OF APPEALS CASE No. 5071	*	CIVIL APPEAL
	*	CASE NO.: 12-C-03-634 AA
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**CONSENT DECREE AND ORDER**

This matter having come before the Court on the Petition for Judicial Review filed by Old Trails Partnership (hereinafter "Applicant") from the final decision of the Harford County Board of Appeals in Case No. 5071, and the Court having reviewed and considered the extensive record in this case, including the transcript, the various Memoranda of Law submitted by the Parties, the Zoning Hearing Examiner's Decision dated June 24, 2002, the Final Decision of the Harford County Board of Appeals dated February 4, 2003, and the ~~oral argument~~ <sup>(d.w.)</sup>, and the Parties having agreed to a full and complete settlement of all issues and matters raised by the Old Trails Partnership's Petition for Judicial Review, this Court finds and the Parties consent as follows:

1. This Consent Decree is hereby entered into this 10<sup>th</sup> day of March, 2004, between Old Trails Partnership, The Peoples' Counsel, Harford County, and The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. All Parties agree that they intend by entry of this Consent Decree to fully and finally resolve all issues in Civil Action No. 12-C-03-634 AA without any further adjudication of these matter, so as to avoid further litigation expenses and inconvenience on the part of the Parties.

**FILED**

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CLERK OF COURT  
HARFORD COUNTY

2. The Court finds and all Parties agree that the Board of Appeals decision in Case No. 5071, which granted some variances and denied some variances, established development pods within which to build, but that the pods were incompletely defined by the Board's Decision. The size, geometric shape, and location of the pods did not allow sufficient land area within which to develop a project that all Parties agree is acceptable, without additional variance relief. Accordingly, the Applicant developed a site plan, which is attached hereto as Exhibit 1. The attached site plan identified development pods in order to establish an overall development plan that the Parties agree is cohesive and consistent with the goals and objectives of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, Harford County, People's Counsel, and the Applicant.

3. The specific variances that were requested by the Applicant are as follows:

- a. A variance pursuant to Section 267-11 and 267-41.1H(1), (2), (3), (4), (5), and (6) of the Harford County Zoning Code from Section 267-41.1(G) (4) (a), Critical Areas buffer, requesting a variance to allow development activities including structures, roads, parking areas, impervious surfaces and stormwater management facilities within the Critical Area buffer.
- b. A variance pursuant to Section 267-11 and 267-41.1H(1), (2), (3), (4), (5), and (6) of the Harford County Zoning Code from Section 267-41.1(G) (3) (a), Habitat Protection Areas, to allow development or other land disturbance activities, within a Critical Area Habitat Protection Area.
- c. A variance pursuant to Section 267-11 and 267-41.1H(1), (2), (3), (4), (5), and (6) of the Harford County Zoning Code from Section (G) (2) (a), and (G) (4) (b) (1), and (2) to allow a modification of the width of the Critical Area buffer, disturbance to the Critical Area Buffer, modification to the tidal and non-tidal wetland buffer and allowance of development activities in non-tidal wetlands.
- d. A variance pursuant to Section 267-11 and 267-41.1H(1), (2), (3), (4), (5), and (6) of the Harford County Zoning Code from Section (G) (4) (e) Riparian Forests, to allow development within a Critical Area Riparian Interior Species Forest.

- e. A variance pursuant to Section 267-11 of the Harford County Zoning Code from Section 267.36B, Table VI, which requires a two hundred foot (200') setback for sewage pumping stations from an adjacent residential lot. The Petitioner proposes a variance of one hundred twenty-five feet (125').

4. This Court finds, and the Parties agree, that the decision of the Harford County Board of Appeals is modified. This Court hereby grants and the Parties concur with the granting of the variances requested by the Applicant, subject to the conditions set forth below, and insofar as required to develop the Old Trails site in accordance with the Site Plan submitted and attached to this Consent Decree (Exhibit 1).

5. The Court hereby modifies the Decision of the Harford County Board of Appeals and grants the necessary variances to develop the Old Trails site in accordance with the Site Plan submitted (Exhibit 1) subject to the following conditions:

- a. The Applicant shall submit a site plan to the Department of Planning and Zoning for review and approval which is in substantial compliance with the site plan attached hereto and incorporated into this Consent Decree as Exhibit 1. This site plan was submitted and jointly stipulated to by all the Parties in this case in open court on March 10, 2004. Said plan is appended hereto as Exhibit 1 and is dated February 3, 2004 and was prepared by Site Resources Incorporated. This plan limits residential development to fifty-six (56) attached homes. Homes are to be designated as Housing for the Elderly as defined by Harford County Zoning Code.
- b. The Applicant shall use phased construction to minimize disturbances and control erosion.
- c. A phased construction plan shall be submitted for review and approval to the Department of Planning and Zoning.
- d. The Plan shall minimize, to the maximum extent possible, the removal and/or disturbance of existing foliage and forest cover.

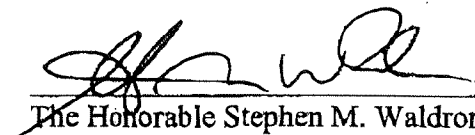
- e. Stormwater management quality control measures will be designed to remove pollutants per the best management practices as recommended in the Applicant's Guide for 10% Rule Compliance - Urban Stormwater Quality Guidance for the Maryland Chesapeake Bay Critical Area in IDA and the Technical Guide for 10% Rule Compliance - Urban Stormwater Quality Guidance for the Chesapeake Bay Critical Area in Intensely Developed Area. A minimum of 4.0 pounds of pollutant must be removed in accordance with the Applicant's final stormwater management plan which shall incorporate measures to reduce uncontrolled runoff presently existing on the property and to improve the water quality of waters returning to Foster Branch from this and other parcels. A Stormwater Management Plan shall be submitted to Harford County for review and approval.
- f. All standard sediment control measures should be implemented as called for in the Sediment Control Plan as required by the Harford County Department of Public Works and Natural Resources Conservation Service. The Plan must utilize phased clearing and construction to minimize disturbed areas and daily stabilization measures to minimize the potential for sediment pollution resulting from disturbance of soils, particularly highly erodible soils prevalent on the property.
- g. The recommendations of the habitats of Local Significance 1966 Update for the Gunpowder Shore (HLS Site #12 (T&E)) will be adhered to throughout the development process. The proposed plan of development shall make adequate provision for restricting shoreline disturbances, stabilizing gullies and other areas of erosion and removal of common weeds and other invasive and undesirable vegetation.
- h. No permanent non Water Dependant Structure other than the pump station, roads, and utilities shall be located in the one hundred foot (100') buffer.
- i. The open space remaining on the property shall be subject to protective covenants that will serve to reserve and protect those areas in their natural state in perpetuity. The covenants restricting those areas shall be submitted to the Department of Planning and Zoning for review and approval and, once finalized, shall be filed among the Land Records of Harford County as a permanent covenant running with the land.

- j. Field studies delineating non-tidal and tidal wetlands, habitats of rare or endangered species, steep slopes and other sensitive environmental features shall be prepared and submitted prior to beginning any development of this site.
- k. The Applicant shall submit the attached site plan for review by the Harford County Development Advisory Committee (DAC).
- l. The Applicant shall submit a final plat for review and approval by the Harford County Department of Planning and Zoning.
- m. The Applicant shall obtain any and all permits and shall comply with all applicable Federal, State, and County regulations.


6. The Parties also agree that, if during implementation of the Consent Decree, there should arise any material dispute regarding interpretation or implementation of the Consent Decree, the Parties shall make a good faith attempt to resolve the disputes. If their good faith attempt fails, the Parties agree to seek expeditious review of the dispute by this Court.

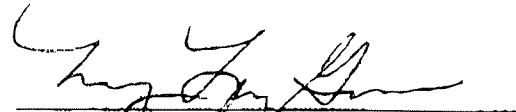
7. The Parties agree to waive their respective rights to appeal this Consent Decree and Order.

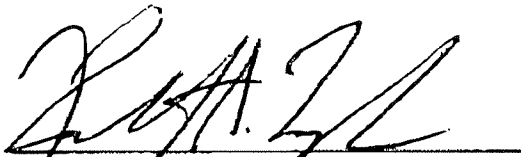
8. This Consent Decree, with attached Exhibit 1, contains the entire understanding of the Parties as to the issue and matters in the above-captioned litigation. The Parties agree that there are no additional promises other than those contained herein, and that this Consent Decree shall not be modified except in writing and signed by all the Parties hereto. This Consent Decree shall be governed by and construed in accordance with Maryland law.

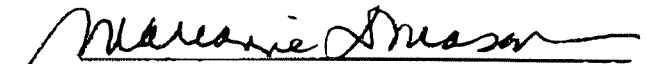
  
The Honorable Stephen M. Waldron

IN WITNESS WHEREOF, the Parties have executed this Consent Decree.

  
Margaret Attanasio, Esquire  
Harford County People's Counsel

  
Nancy L. Giorno, Esquire  
Senior Assistant County Attorney  
Attorney for Harford County, Maryland

  
Robert S. Lynch, Esquire  
Attorney for Old Trails Partnership

  
Marianne D. Mason, Esquire  
Deputy Counsel, Department of Natural  
Resources, Attorney for the Critical Area  
Commission for the Chesapeake and  
Atlantic Coastal Bays